REMARKS

Reconsideration is respectfully requested, for the rejection of the claims as unpatentable over WITLER et al. 5,375,832.

Claim 10, the basic claim, requires that there be a radar device which detects the swing speed of a golf club. WITLER has a radar, all right, but it does not and cannot measure the swing speed of a golf club. Instead, the radar device of WITLER is a long-range device specifically for measuring the speed of a golf ball in flight. The radar device can be used to detect the presence of golf club swing, but not the speed.

See column 8, line 8 et seq., wherein WITLER stipulates a saturation detector which detects movement (not speed) of either the club head or the golf ball.

See column 9, line 53, which stipulates that the transmitter and receiver unit 32, that is, the radar, is aimed at the golf ball while in flight. In other words, it is not aimed at the club head.

In WITLER's column 12, beginning on line 18, it is stipulated that the discriminator circuit "does not see the club head speed". The discriminator circuit is enabled due to the saturation condition exhibited by the automatic gain control (column 12, line 3 et seq.)

In column 14 of WITLER et al., line 22 clearly states that "the golfing apparatus does not use club head speed". What could be plainer?

Because WITLER et al. does not detect golf club swing speed, it therefore cannot have a radar device which produces a first signal which corresponds to the swing speed. Nothing in WITLER corresponds to swing speed. The signal produced by WITLER simply indicates saturation of the automatic gain control, and does not correspond to swing speed in any way.

The Official Action is therefore inaccurate when it states that "One skilled in the art ... would have found it obvious to modify Witler et al. to adjust the monitoring means to vary the predetermined level of the acoustic trigger in accordance with the amplitude of the swing speed signal." In fact, there is no signal relating to swing speed in WITLER. There is only a saturation signal. Because the signal is saturated, there is no discernable amplitude, and therefore it is not possible to modify WITLER to vary the predetermined level of the acoustic trigger.

To support a rejection of obviousness, the Examiner must first establish a *prima facie* case of obviousness. As indicated in *The Manual of Patent Examining Procedure* (M.P.E.P.), 2142, to establish a *prima facie* case of obviousness, three basic criteria must first be met. First, there must be some suggestion or motivation to modify the reference or to combine

the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim recitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Thus, WITLER does not provide a *prima facie* of obviousness but relates only to monitoring the speed of a golf ball in flight. But in the present invention, we don't care what is the speed of the golf ball. Thus, there is no motivation or suggestion in WITLER that would lead a person skilled in the art to have modified the WITLER device at the time the present invention was made.

Still further, WITLER cannot readily be modified, since it explicitly states that it does not detect swing speed, and it is explicit in WITLER that only a saturated signal is produced, thus preventing determination of amplitude. There is thus no "reasonable expectation of success". On the contrary, there is certainty of failure.

Accordingly, the teaching or suggestion to make the claimed combination and the reasonable expectation of success are not found in WITLER but only in the present application. Thus, the rejection is based entirely on hindsight, which of course is not permissible.

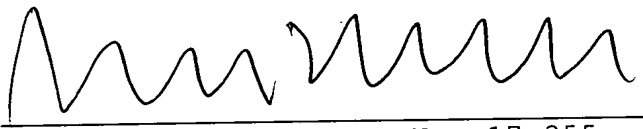
Claim 1 is accordingly believed to be patentable without amendment, and of course claims 11 and 12 dependent therefrom are also patentable because of that dependency and because of the further features of novelty that they separately recite.

In view of the present remarks, therefore, it is believed that the present application is in condition for allowance, and passage to issue is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



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